



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 200124-0029]**

**RTID 0648-XB702**

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; 2021 Red Snapper Private Angling Component Accountability Measure in Federal Waters off Texas**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule, accountability measure.

**SUMMARY:** Through this temporary rule, NMFS implements accountability measures (AMs) for the red snapper recreational sector private angling component in the Gulf of Mexico (Gulf) off Texas for the 2021 fishing year. Based on information provided by the State of Texas Parks and Wildlife Department (TPWD), NMFS has determined that the 2020 Texas regional management area private angling component annual catch limit (ACL) for Gulf red snapper was exceeded. Therefore, NMFS reduces the 2021 private angling component ACL of Gulf red snapper for the Texas regional management area. This reduction will remain in effect through the remainder of the current fishing year on December 31, 2021, and is necessary to protect the Gulf red

snapper resource.

**DATES:** This temporary rule is effective from 12:01 a.m., local time, on *[insert date of filing for public inspection with the Office of the Federal Register]*, until 12:01 a.m., local time, on January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *kelli.odonnell@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** The Gulf reef fish fishery, which includes red snapper, is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622. All red snapper weights discussed in this temporary rule are in round weight.

In 2015, Amendment 40 to the FMP established two components within the recreational sector fishing for red snapper: the private angling component, and the Federal charter vessel and headboat (for-hire) component (80 FR 22422, April 22, 2015). In 2020, NMFS implemented Amendments 50 A-F to the FMP, which delegated authority to the Gulf states (Louisiana, Mississippi, Alabama, Florida, and Texas) to establish specific management measures for the harvest of

red snapper in Federal waters of the Gulf by the private angling component of the recreational sector (85 FR 6819, February 6, 2020). These amendments allocate a portion of the private angling ACL to each state, and each state is required to constrain landings to its allocation as part of state management.

As described at 50 CFR 622.39(a)(2)(i), the Gulf red snapper recreational sector quota (ACL) is 7.399 million lb (3.356 million kg) and the recreational private angling component quota (ACL) is 4.269 million lb (1.936 million kg). Also, as described at 50 CFR 622.23(a)(1)(ii)(E), the Texas regional management area private angling component ACL is 265,105 lb (120,250 kg). Regulations at 50 CFR 622.23(b) require that if a state's red snapper private angling component landings exceed the applicable state's component ACL, then in the following fishing year, that state's private angling ACL will be reduced by the amount of that ACL overage in the prior fishing year.

For the 2019 fishing year, the Texas recreational red snapper private component (private vessel and state charter vessels) was managed under an exempted fishing permit with a state ACL of 265,090 lb (120,243 kg). Under Amendment 50F, any overage of the 2019 Texas ACL would be applied to Texas's portion of the 2020 private angling ACL. On August 24, 2020, NMFS determined that 2019 landings of red snapper off Texas for the private angling component were 375,616 lb

(170,377 kg) and published a temporary rule reducing the Texas regional management area private angling component ACL for Gulf red snapper to 154,579 lb (70,116 kg) for the 2020 fishing year (85 FR 52055, August 24, 2020).

On September 23, 2020 Texas filed a complaint in the United States District Court for the Southern District of Texas alleging, in part, that the NMFS used incorrect data when determining the overage of the 2019 Texas ACL (*State of Texas v. Department of Commerce*, No. 3:20-cv-297 (S.D. Tex.)). Texas estimated that its 2019 landings were 327,105 lb (148,372 kg), resulting in a 62,015 lb (28,170 lb) overage of its 2019 annual catch limit. The different estimates resulted from NMFS and Texas using different recreational harvest estimation methodologies. Specifically, Texas misapplied the length-weight relationship component of the estimation methodology, which resulted in lower landings estimates than those produced by NMFS. However, NMFS and Texas were not aware of this discrepancy until the fall 2020, which was too late to address the issue for either the 2019 or 2020 fishing years. To resolve the litigation, NMFS has agreed to use Texas's 2019 and 2020 estimates to apply the accountability measure in 2020 and 2021. Texas has agreed to dismiss, with prejudice, all claims in the complaint, provide more timely landings estimates to NMFS, prohibit harvest in their state waters when it determines its private angling ACL is met or projected to be met, and

use an agreed methodology for estimating landings for 2021 and beyond.

Consistent with the agreement, the 2019 estimate landings of red snapper off Texas for the private angling component is revised from 375,616 lb (170,377 kg) to 327,105 lb (148,372 kg), which results in an overage of 62,015 lb (28,170 kg) for the 2019 fishing year and an adjusted 2020 Texas ACL of 203,090 lb (92,120 kg). Texas has estimated that the 2020 landings of red snapper off Texas for the private angling component is 229,725 lbs (104,202 kg), resulting in an overage of 26,635 lb (12,081 kg) and an adjusted 2021 Texas ACL of 238,470 lb (108,168 kg). Additionally, as a result of the adjusted Texas ACL, the total private angling component quota and the total recreational quota (ACL), will also be reduced. The private angling component quota will reduce from 4,269,000 lb (1,936,000 kg) to 4,242,365 lb (1,824,304 kg) and the total recreational quota will reduce from 7,399,000 lb (3,356,000 kg) to 7,372,365 lb (3,344,049 kg). The recreational private angling component ACLs for other Gulf state management areas for 2021 are unaffected by this notice.

The TPWD is responsible for ensuring that 2021 private angling component landings in the Texas regional management area do not exceed the adjusted 2021 Texas ACL. As described at 50 CFR 622.23(c), a Gulf state with an active delegation of state management of the red snapper private angling

component may request that NMFS close all, or an area of, Federal waters off that state to the harvest and possession of red snapper by private anglers. At the request of Texas, NMFS previously announced closure dates for the red snapper private angling component in Gulf Federal waters off Texas for the 2021 fishing year (85 FR 78792 (December 7, 2020); 86 FR 43117 (August 6, 2021)). On November 15, 2021, Texas closed state waters to red snapper fishing (<https://tpwd.texas.gov/newsmedia/releases/?req=20211109a>).

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required under 50 CFR 622.23(b) which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

The Assistant Administrator for NOAA Fisheries (AA) finds that the need to implement this action to reduce the private angling component ACL for the Texas regional management area constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b) (B), because such procedures are contrary to the public interest. Such

procedures are contrary to the public interest because a failure to implement the ACL overage adjustment prior to the end of 2021 would not reduce the 2021 Texas ACL, consistent with the agreement between NMFS and Texas, and as required under Amendments 50F. Adjusting the 2021 Texas ACL will ensure that any harvest in excess of that adjusted ACL is accounted for during the 2022 fishing year.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of the action under 5 U.S.C. 553(d) (3).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: December 28, 2021.

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Karen Abrams,  
Acting Director, Office of Sustainable Fisheries,  
National Marine Fisheries Service.